

ARKANSAS SUPREME COURT

No. 07-982

ROBERT SHERMAN ROBINSON
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

Opinion Delivered January 10, 2008

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE BRIEF [CIRCUIT
COURT OF LINCOLN COUNTY, LCV
2007-42, HON. ROBERT H. WYATT,
JR., JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

Robert Sherman Robinson, appellant herein, is an inmate in the custody of the Arkansas Department of Correction (ADC). He filed a pro se petition for declaratory judgment against the ADC director seeking a determination that his 1990 convictions for aggravated robbery and theft of property in Pulaski County Circuit Court violated the constitutional protections against double jeopardy.¹ The trial court dismissed the petition without a hearing, and appellant has lodged an appeal here from the order.

Appellant now seeks an extension of time to file his brief.² As appellant could not be successful on appeal, the appeal is dismissed and the motion is moot. An appeal from an order that

¹In that case, appellant was also convicted of theft by receiving, first-degree assault and being a felon in possession of a firearm, but those charges are not at issue here. On appeal, we affirmed the convictions for all charges. *Robinson v. State*, 303 Ark. 351, 797 S.W.2d 425 (1990).

²After appellant filed the motion, he timely filed the brief. As there is clearly no merit to the appeal, we nevertheless decline to permit the appeal to go forward.

denied a petition for postconviction relief or other civil remedy will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam).

We find that appellant's declaratory judgment action was properly dismissed for the reasons stated herein. This court has long enumerated the four prerequisites that must be present in order for a declaratory judgment to be issued. In *Andres v. First Arkansas Development Finance Corp.*, 230 Ark. 594, 324 S.W.2d 97 (1959), we quoted W. Anderson, ACTIONS FOR DECLARATORY JUDGMENTS, § 187 (2d ed.1951):

(1) There must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting it; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; in other words, a legally protectable interest; and (4) the issue involved in the controversy must be ripe for judicial determination.

Andres, 230 Ark. at 606-607, 324 S.W.2d at 104-105. A declaratory judgment action is not a substitute for ordinary causes of action, and is intended to supplement, rather than supersede, those causes of action. *City of Fort Smith v. Didicom Towers, Inc.*, 362 Ark. 469, 209 S.W.3d 344 (2005); *Martin v. Equitable Life Assur. Soc. of the U.S.*, 344 Ark. 177, 40 S.W.3d 733 (2001). Moreover, such an action is not a proper means of trying a case or various issues involved in it on a piecemeal basis. *Boyett v. Boyett*, 269 Ark. 36, 598 S.W.2d 86 (1980).

Within this framework, appellant had no basis to obtain a declaratory judgment related to his double-jeopardy claim. The gravamen of appellant's complaint was that he was convicted twice for the same conduct related to the aggravated robbery and theft of property charges.

This issue has been fully addressed in appellant's direct appeal. *Robinson, supra*. Our court has held that a greater offense and its lesser-included offenses are considered the same for purposes

of double jeopardy. *See e.g. Standridge v. State*, 357 Ark. 105, 161 S.W.3d 815 (2004) (citing *Hughes v. State*, 347 Ark. 696, 703, 66 S.W.3d 645, 648 (2002)). Therefore, in making a determination that a theft-of-property charge was not a lesser-included offense to a charge of aggravated robbery, appellant was not subjected to double jeopardy.

It is apparent that the only purpose for bringing a declaratory judgment action was as an attempt to supersede our prior decision on appeal and create a substitute for the criminal trial in circuit court. Neither of these ends present a proper basis for issuance of a declaratory judgment. *City of Ft. Smith, supra*.

Appeal dismissed; motion moot.